IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

TUESDAY, THE 21ST AUGUST 2007 / 30TH SRAVANA 1929

WP(C).No. 15759 of 2006(A)

PETITIONER:

THE DEPUTY GENERAL MANAGER,
SYNDICATE BANK, REGIONAL OFFICE,THIRUVANANTHAPURAM
(PRESENTLY HOLDING THAT OFFICE BY THE
CHIEF MANAGER, SYNDICATE BANK, REGIONAL OFFICE,
SHANMUGHAM ROAD, ERNAKULAM.

BY ADV. SRI.M.PATHROSE MATTHAI (SR.)
SRI.M.P.ASHOK KUMAR

RESPONDENTS:

1. THE GENERAL SECRETARY,
SYNDICATE BANK STAFF UNION, SHANTHI THEATRE ANNEXO
44-MOUNT ROAD, MADRAS-2.

2. LABOUR COURT, ERNAKULAM.

BY ADV. SRI.JOSE PALLATTUKARAN
BY GOVERNMENT PLEADER SRI. M.R.SABU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27/07/2007 ALONG WITH WPC.NO.31879 OF 2006, THE COURT ON 21/08/2007 DELIVERED THE FOLLOWING:

WPC.NO.15759/2006 A

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE JUDGMENT IN W.A.578/04 DTD. 27/05/2005.

EXT.P2: COPY OF THE AWARD IN I.D.8/95 DTD. 18/01/2006.

EXT.P3: COPY OF THE ARGUMENT NOTES FILED BY THE PETITIONER BEFORE THE LABOUR COURT, ERNAKULAM.

1ST RESPONDENT'S EXHIBITS:

EXT.R1(A): COPY OF THE EXT.M25, WHICH WERE PRODUCED BY THE MANAGEMENT BEFORE THE 2ND RESPONDENT.

EXT.R1(B): COPY OF THE ORIGINAL OF EXT.M25 SERIES.

EXT.R1(C): COPY OF THE M.P.NO.9/2006.

EXT.R1(D): COPY OF THE ARGUMENT NOTE SUBMITTED BY THE WORKMAN BEFORE THE LABOUR COURT.

EXT.R1(E): COPY OF THE LETTER NO.17/12/06/D2 DTD. 25/05/06 ISSUED BY THE ASSISTANT LABOUR COMMISSIONER, KAKKANADU.

EXT.R1(F): COPY OF THE SHOW CAUSE NOTICE ISSUED TO SRI.RICHARD MARTIS BY THE BANK.

/TRUE COPY/

P.A.TO JUDGE

KSS

S.SIRI JAGAN, J.

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W.P.(C).Nos.15759 & 31879 of 2006

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Dated this the 21st day of August, 2007

J U D G M E N T

W.P(C).No.15759/2006:

The Deputy General Manager of the Syndicate Bank, who is the management in I.D.No.8/1995 before the Central Government Labour Court, Ernakulam, is the petitioner herein. He is challenging Ext.P2 award of the Labour Court passed in that I.D., by which, after finding the workman guilty of misconducts alleged against him, he was directed to be given full backwages till the date of his superannuation and all retirement benefits and other benefits as if he had retired on superannuation in normal course, in view of the fact that in respect of identical charges the manager who was also charge sheeted along with the workman involved, was imposed only with a lesser punishment of withholding of promotion to the next higher grade for a period of five years.

2. The issue referred for adjudication to the Labour Court was as follows:

"Whether the action of the Management of Syndicate Bank,

Trivandrum in dismissing Sri.J.P.Prabhakar, Special Assistant from service with effect from 28.3.1994 is legal and justified? If not what relief is the said workman entitled to?"

3. Originally, considering the validity of the enquiry as a preliminary issue, the Labour Court found that the enquiry was not proper and valid. By an award dated 28.11.2001 the Labour Court directed reinstatement of the workman with full backwages and continuity of service. That award was originally upheld by a learned Single Judge of this court in O.P.No.5491/2002. The management took up the matter in appeal in W.A.No.578/2004. In that writ appeal, by Ext.P1 judgment, a Division Bench of this Court found that the charges levelled against the workman were proved and that the charges were very serious in nature also. However, in view of the fact that the Manager Richard Martis was also guilty of identical misconducts in respect of the same transaction and he was imposed only with the penalty of withholding of promotion to the next higher grade for a period of five years, whereas the workman was dismissed from service the Division Bench remanded the

matter to the Labour Court with a direction to examine the quantum of punishment in the light of the fact that Manager Richard Martis was imposed with a lesser punishment. The Division Bench also directed the Labour Court to examine the question as to whether, because of the conduct of the workman, the bank had suffered any financial loss. After remand, the Labour reconsidered the matter by Ext.P2 award and came to the conclusion that the charges levelled and proved against the workman and Manager Richard Martis are identical and while the manager was imposed with a lesser punishment, the workman was given the extreme punishment of dismissal from service. The Labour Court further found that even if the management bank sustained loss due to the conduct of the workman, since the accounts are closed and written off, the staff accountability of the workman is also closed. Thereafter, the Labour Court gave the workman relief by directing the management to pay full back wages to the workman till the date of his superannuation along with all retirement benefits and other

benefits as if he had retired on superannuation in normal course. This award is under challenge in this writ petition at the instance of the management.

4. Both sides advanced very lengthy arguments before me. After hearing the arguments before reserving judgment, I gave the parties an opportunity to settle the matter amicably and adjourned the matter for that purpose, on 18.6.2007. In spite of granting more than one month for that purpose, on 27.7.2007 the management submitted that there is no scope for any settlement. Accordingly, I decided to take up the matter for judgment.

5. The issue presented before me for consideration lies in a very narrow compass. The Division Bench has, in Ext.P1 judgment in the writ appeal, already held that the workman is guilty of the misconducts alleged against him. The only questions remaining to be considered are as to whether (1) the punishment imposed on the workman is proper and (2) the management has suffered loss on account of the misconducts committed by the workman.

6. Neither party has produced before me the charge sheet issued to the workman to enable me to ascertain as to what are the charges levelled against the workman. Curiously, the Labour Court has also not specifically narrated the charges in the award while deciding the reliefs to be granted. But I find that the Division Bench had, in Ext.P1 judgment, referred to the charges as follows:

> "3.... He had illegally authorised certain transactions in 11 accounts between 21.12.1988 and 12.5.1990. He had fraudulently permitted withdrawal, allowed debit balance, without authority, manipulated ledgers and registers, passed post-dated cheques, debited cheque for one party to the account of another, over detained the C.V.R. allowed withdrawal against credit knowing the fate of clearing instruments etc. Due to the above mentioned unauthorised transactions Bank had suffered huge financial loss, accounts became irregular and sticky and irrecoverable. Workman therefore had acted in a manner detrimental to the interest of the Bank. "

7. I need not delve deep into the question as to whether the misconducts proved against the workman were serious in nature because the Division Bench had in Ext.P1 judgment decided that also in the following words:

> "9.... Misconduct of the workman is very serious nature involving trust and confidence reposed on him by the Bank. Workman as the supervisor in charge of the current account has misused his position by allowing debit allowance and withdrawals without sufficient security and espoused (sic - exposed) the Bank to financial loss. Rules and regulations of the Bank lay down limits and authority of its employees. Admittedly workman had exceeded his powers conferred on him by the Rules and regulations of the Bank. Workman had shown undue benefits to customers and thereby constituted gross misconduct within the

meaning of clause 19(5(j) of the bipartite settlement. Even if the case of the workman that he had acted at the instance of the Manager or other superiors is accepted, he ought to have got the transactions approved in writing from time to time."

Thereafter the Division Bench held as follows:

"Manager Richard Martis was also charge sheeted on the allegation that he had discounted or caused to be discounted cheques for an amount of Rs.2.53 lakhs to seven customers and allowed unsecured debit balance amounting to Rs.7.06 lakh in current accounts of nine customers during the period 6.10.1988 to 3.6.1990. Richard Martis was also found guilty of misconduct and punishment was imposed by withholding his promotion to the next higher grade for a period of five years. We notice that while the workman was dismissed from service Richard Martis was given lesser punishment."

It is in view of such findings that ultimately the Division Bench directed the Labour Court as follows:

"We therefore set aside the award passed by the Labour Court and the judgment of the learned single judge. The only question is regarding the quantum of punishment to be imposed taking into account consideration that a lesser punishment has been imposed on Richard Martis. The Labour Court is directed to examine the quantum of punishment. Labour Court would also examine the question whether because of the conduct of the workman Bank had suffered any financial loss. We have already indicated that the workman has completed the year of superannuation. Labour Court will therefore pass appropriate orders at the earliest, at any rate, within a period of three months from the date of receipt of a copy of this judgment ."

8. The question as to whether for such misconducts, what would be the proper of punishment was also referred to by the Division Bench in the light of two Supreme Court decisions on the subject as follows:

'10. The apex court in *Disciplinary Authority-cum-Legal. Manager v. Punjabi's Bukharin Patna's* (1996 (9) CC 69), while dealing with the provisions of the Central Bank of India Officer Employees' (D&A) Regulations, held as follows:

> *"No organization, more particularly, a bank can function properly and and effectively if its officers and employees do not observe the prescribed norms and discipline. Such indiscipline cannot be condoned on the specious ground that it was not actuated by ulterior motives or by extraneous considerations. The very act of acting beyond authority – that too a course of conduct spread over a sufficiently long period and involving innumerable instances – is by itself a misconduct. Such acts, if permitted, may bring in profit in some cases but they may also lead to huge losses. Such adventures are not given to the employees of banks which deal with public funds. If what we hear about the reasons for the collapse of Bearings Bank is true, it is attributable to the acts of one of its employees.*

The apex court in State Bank of India v. T.J.Paul (1999 (4) S.C.C.759) while dealing with the provisions of Bank of Cochin Service Code followed the above mentioned decision and held that doing any act prejudicial to the interests of the Bank, or gross negligence involving or likely to involve the Bank in serious loss would amount to misconduct and proof of actual loss was not necessary to attract misconduct. Apex court in Chairman and Managing Director, United Commercial Bank v. P.C.Kakkar (2003 (4) CC 364) while examining the provisions of the United Commercial Bank Officer Employees (Conduct, Discipline and Appeal) Regulations, 1976, held as follows:

> *"A bank officer is required to exercise higher standards of honesty and integrity. He deals with the money of the depositors and the customers. Every officer/employee of the bank is required to take all possible steps to protect the interests of the bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a bank officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the bank."*'

9. Applying the above said principles I have absolutely no hesitation to hold that the workman as well as the Manager Richard Martis, who was also found guilty of somewhat identical charges that too in respect of the same

transaction, extremely deserves the punishment of dismissal from service. But unfortunately the petitioner bank itself chose to take a very lenient attitude towards manager Richard Martis and they found it fit to impose on him a lesser punishment of withholding of promotion to the next higher grade for a period of five years. Consequently, he was reinstated in service with the above punishment, he continued in service and retired in the normal course. Therefore, I am called upon to decide whether in view of that fact the workman should be given the extreme punishment of dismissal itself. When two employees are proceeded against on charges of misconduct arising from the same transaction and the charges of misconducts are also more or less identical, I cannot hold that it would be just to treat them differently in the matter of imposing punishment. If I could, I would certainly have directed imposition of extreme punishment of dismissal on both employees, but unfortunately it is not possible now to review the punishment imposed on Manager Richard Martis. Therefore,

in view of the Division Bench decision, Ext.P1, I am constrained to mould the relief taking into account the punishment imposed on Manager Richard Martis. But at the same time, I do not think that the workman should be rewarded with full back wages for the period during which time he was kept out of employment. Taking into account the entire facts and facts and circumstances of the case, I feel that justice would be met if the workman is denied 50 per cent of the back wages. Accordingly, Ext.P2 award is modified to the extent of reducing 50 per cent of the back wages payable to the workman from the date of his dismissal till the date of superannuation. In other respects, the award would stand.

10. Since the Division Bench had also directed the Labour Court to examine the question as to whether, because of the misconducts of the workman, the bank had suffered any financial loss, I have to deal with the correctness of the decision of the Labour Court on that issue also. The Labour Court has dealt with this question and ultimately came to the conclusion as follows:

> "In the claim statement union/workman has stated that after the total advances mentioned in the charge sheet only a fraction namely around Rs.100000/- remained to be recovered. In the written statement the management has stated that the delinquent workman/union has admitted over due liability of Rs.100000/- due to the Act of the workman. The management has not stated in the written statement the quantum of loss sustained to the management. However, as per the suit file accounts (Ext.M25 series) would show that the management is entitled to get an amount of Rs.481400.90 from the creditors and that amount includes accumulated interests and other expenses. It is particular to note that suit file against the creditors by the management bank have already been decreed and exception petitions are filed. But the Bank could not recover the amount as the creditors/judgment letters (sic) are not traceable or they are absconding. The management banks right to recover the decree debts is still in force even though the accounts are closed and written off. Even though the management bank sustained loss due to the conduct of the workman, since the accounts are closed and written off, the staff accountability of the workman is also closed."

(Emphasis supplied)

As such, the Labour Court itself found that the management had suffered a loss of Rs.4,81,400.90. But I cannot understand the logic that since accounts are closed and written off, staff accountability of the workman was also closed. When the bank in fact sustained loss on account of misconducts of the workman, just because the amounts are written off as bad debts, the loss does not become any the less a loss to the bank, which loss has been actually found by the Labour Court which is not challenged by the workman. The loss is on account of the misconducts committed by the workman. Therefore, responsibility of the

workman to account for the same never ceases. That being so, I am satisfied that the petitioner-management is entitled to recover the said amount of Rs.4,81.400.90 from the workman. Therefore, the management would be entitled to recover the said amount from the benefits to be paid to the workman as held above.

W.P(C).No.15759/2006 is disposed of accordingly.

W.P(C).No. 31879/2006.

This writ petition is filed by the workman involved in the industrial dispute which is the subject matter of W.P(C). No.15759/2006. The bank filed a suit against the workman for recovery of loan amounts given to the workman and got a decree against the workman. In that decree, a question arose as to what is the rate of interest the workman is liable to pay on the amounts decreed, ie. whether it is to be calculated at the rate of 17.5 per cent per annum or at the rate applicable to the employees of the bank, which would necessarily depend on the decision of question of dismissal of workman from service. Ext.P4 is the judgment in that

suit. After finding the issues in favour of the bank, the Civil Court held as follows:

> "In the result, the suit is decreed entitling the plaintiff to realize rs.95,786/- (Rupees Ninety five thousand, seven hundred and eighty six only) with interest at the rate of 17.5% (seventeenths per cent) per annum compounded quarterly from the date of suit until realisation and with costs of the suit from the defendant and his assets and by sale of the plaint scheduled properties. It is further clarified that in the event of the order of dismissal of the defendant from service being revoked or set aside and he being reinstated, the interest shall be recalculated as per the loan agreement and the decree debt shall be recalculated accordingly."

Now that I have decided the writ petition relating to the dismissal of the workman as above, it is for the parties to work out their remedies while executing the decree in accordance with the above decisions. W.P(C).No. 31879/2006 is disposed of accordingly.

Sd/-

sdk+ S.SIRI JAGAN, JUDGE

///True copy///

P.A. to Judge.